

QUESTIONNAIRE FOR FILING PROPOSED RULES WITH
THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE

DEPARTMENT/AGENCY Education
DIVISION Central Administration
DIVISION DIRECTOR _____
CONTACT PERSON Tripp Walter
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INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire & financial impact statement attached to the front of two (2) copies of your proposed rule and required documents. Mail or deliver to:

Donna K. Davis
Subcommittee on Administrative Rules and Regulations
Arkansas Legislative Council
Bureau of Legislative Research
Room 315, State Capitol
Little Rock, AR 72201

- 1. What is the short title of this rule? **Rules Governing the Requirement of a Criminal Background Check for the Employment of Personnel in School Districts**
- 2. What is the subject of the proposed rule? **The subjects are: 1) requirement of a criminal background check for fraudulent acts by fiscal officers of public school districts, and 2) State Board of Education's authority to allow employment eligibility in certain cases.**
- 3. Is this rule required to comply with federal statute or regulations? Yes _____ No X _____
If yes, please provide the federal regulation and/or statute citation.
- 4. Was this rule filed under the emergency provisions of the Administrative Procedures Act?
Yes _____ No X _____
If yes, what is the effective date of the emergency rule?

When does the emergency rule expire?

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes _____ No _____

5. Is this a new rule? Yes _____ No X _____ If yes, please provide a brief summary explaining the regulation.

Does this repeal an existing rule? Yes _____ No X _____ If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes X _____ No _____ If yes, please attach a markup showing the changes in the existing rule and a summary of the substantive changes. **NOTE: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law grants the authority for this proposed rule. If codified, please give Arkansas Code citation. **Ark. Code Ann. § 6-17-105, 6-17-405, 6-17-410, 6-17-414 and 6-17-421**

7. What is the purpose of this proposed rule? Why is it necessary? **To provide processes and procedures for certain criminal background checks and employment eligibility waivers pursuant to Ark. Code Ann. § 6-17-444(e) and 6-17-421/**

8. Will a public hearing be held on this proposed rule? Yes X _____ No _____
If yes, please complete the following:

Date: May 13, 2004

Time: 1:00 p.m. to 2:30 p.m.

Place: Auditorium, Arkansas Department of Education

9. When does the public comment period expire for permanent promulgation? (Must provide a date.) **May 13, 2004**

10. What is the proposed effective date of this proposed rule? (Must provide a date.)
July 1, 2004

11. Do you expect this rule to be controversial? Yes _____ No X _____
If yes, please explain.

12. Please give the names of persons, groups, or organizations that you expect to comment on these rules. Please provide their position (for or against) if known.
Various educational groups and the Arkansas State Police

SUMMARY

- Integrates the Department's current rule concerning the requirement of a criminal background check for the employment of school personnel with the requirements of Acts 82 (A.C.A. § 6-17-421) and 103 (A.C.A. § 6-17-414(e)) fo the 2nd Extraordinary Session of 2003.
- Articulates the requirement of criminal background checks for applicants for initial employment as a fiscal officer of a school district;
- Sets the State Board of Education's hearing procedures concerning those individuals who are currently employed as a fiscal officer with a school district who have been convicted of fraudulent acts and are thus subject to dismissal;
- Establishes employment eligibility waiver provisions for non-certified personnel in SBE actions.
- Cleans up prior provisions, including updating relevant statutory citations.

FINANCIAL IMPACT STATEMENT

DEPARTMENT Education
DIVISION Central Administration
PERSON COMPLETING THIS STATEMENT Tripp Walter
TELEPHONE NO. 683-0087 FAX NO. 682-4249
EMAIL twalter@arkedu.k12.ar.us

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE **Rules Governing the Requirement of a Criminal Background Check for the Employment of Personnel in School Districts**

1. Does this proposed, amended, or repealed rule or regulation have a financial impact? Yes _____ No X _____
2. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.
3. If the purpose of this rule or regulation is to implement a federal rule or regulation, please give the incremental cost for implementing the regulation. Please indicate if the cost provided is the cost of the program.

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

4. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule or regulation? Identify the party subject to the proposed regulation and explain how they are affected.

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

5. What is the total estimated cost by fiscal year to the agency to implement this regulation?

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

DEPARTMENT OF EDUCATION
FISCAL IMPACT STATEMENT OF PROPOSED REGULATION
(In compliance with Acts 884 and 1253 of 1995)

Regulation Title: **Rules Governing the Requirement of a Criminal Background Check for the Employment of Personnel in School Districts**

Summary Description of Regulatory Proposal: **To provide processes and procedures for certain criminal background checks and employment eligibility waivers**

Cite Statutory Authority for this Regulatory Proposal: **Ark. Code Ann. § 6-17-105, 6-17-405, 6-17-410, 6-17-414 and 6-17-421**

- I. Fiscal Impact on the Department: (include whether impacts are non-recurring or recurring)
 - A. Resources Required - Personnel, equipment, office space.
 Department personnel will be responsible for ensuring that provisions of the rule are complied with.
 - B. Time Required for Implementation.
 - C. Procedural Changes.
 - D. Other.
- II. Fiscal Impact on Local School District or Others? (Include whether impacts are non-recurring or recurring)
 - A. Resources Required - Personnel, equipment, office space.
 District personnel will need to account for provisions contained in Section 4.01.7, 4.12, 4.13 and 6.02 of the rule.
 - B. Time Required for Implementation.
 - C. Procedural Changes.
 - D. Other. **Arkansas State Police will have additional responsibility for performing criminal background checks listed in Section 4.01.7 of the rule.**
- III. Additional Comments.

Prepared by: (Name) Tripp Walter
 (Title) Staff Attorney
 (Date) April 13, 2004

**ARKANSAS DEPARTMENT OF EDUCATION
RULES AND REGULATIONS
GOVERNING THE REQUIREMENT
OF A CRIMINAL BACKGROUND CHECK FOR THE EMPLOYMENT OF
PERSONNEL IN SCHOOL DISTRICTS
FOR ALL
~~FIRST-TIME AND RENEWAL EDUCATIONAL LICENSES,~~
~~AND THE PROCEDURES FOR REVOCATION OF LICENSES~~
Revised July 22, 1999**

1.00 REGULATORY AUTHORITY

- 1.01 These ~~regulations~~ rules shall be known as Arkansas Department of Education Regulations governing the requirement of criminal background checks for the employment personnel in school districts, and, requirement of criminal background check for all first-time applicants, each applicant for his or her first license renewal, and the revocation procedures for such licenses.
- 1.02 These ~~regulations~~ rules are enacted pursuant to the State Board of Education=s Authority under Ark. Code Ann. § 6-17-105, §6-17-405, ' 6-17-410, (Supp. 1997), § 6-17-414 and § 6-17-421.

2.00 PURPOSE

- 2.01 Its is the purpose of these ~~regulations~~ rules to set forth the requirement for a criminal background check for each first-time applicants for a license issued by the State Board of Education and each applicant for his or her first license renewal on or after July 1, 1997.
- 2.02 It is further the purpose of these ~~regulations~~ rules to prescribe the procedure for revocation of an educational license.
- 2.03 It is further the purpose of ~~this revision~~ these rules to clarify whose criminal background check fees shall be paid by the Department of Education, ~~in accordance with Act 226 of 1999.~~
- 2.04 It is further the purpose of ~~this revision~~ these rules to clarify that the superintendent shall have the responsibility of reporting licensure violations of teachers to the State Board, ~~in accordance with Act 1161 of 1999.~~
- 2.05 It is further the purpose of these rules to add provisions concerning the requirement of criminal background checks for the employment of noncertified personnel in school districts, and fraudulent acts by fiscal officers of public school districts.

3.00 DEFINITIONS/ACRONYMS

For the purposes of these rules and regulations:

3.01 ADE: Arkansas Department of Education.

3.02 Applicant: An individual that is a first-time applicant for a license issued by the State Board of Education; an individual applying for his or her first license renewal on or after July 1, 1997, and an individual applying for initial employment as a fiscal officer of a school district.

3.03 Breach of fiduciary trust: means the wrongful misappropriation by a person of any fund or property which had lawfully been committed to him or her in a fiduciary character.

3.024 Criminal background check: a state and nationwide criminal records check conducted by the Arkansas State Police and the Federal Bureau of Investigation, including the taking of fingerprints.

3.035 FBI: Federal Bureau of Investigation.

3.06 First-time applicant: initial or first license issued to each applicant by the SBE State Board of Education.

3.07 Fiscal Officer: any certified or non-certified employee of a school district or education service cooperative who has any right, duty, or responsibility to access funds of a school district in excess of two hundred dollars (\$200), specifically including, but not limited to, superintendents, fiscal officers and bookkeepers.

3.08 Fraud: means all acts, omissions and concealments involving a breach of a legal or equitable duty and resulting in damage to another.

3.09 Fraudulent Act: An act involving fraud, or breach of fiduciary trust, which is punishable under the criminal code in the jurisdiction within which the act occurred.

3.0610 License renewal applicant for purposes of payment by the Department of Education; shall be employees of Arkansas public school districts, employees of other public education institutions located in Arkansas, and employees of the Department of Education for his or her first license renewal on or after July 1, 1997.

3.0711 Law enforcement officer: either a state policeman or officer, a city policeman or officer, a sheriff or a deputy sheriff.

3.08~~12~~ Letter of provisional eligibility: a six-month, non-renewable letter of provisional eligibility for licensure issued by the ~~SBE~~ State Board of Education to the a first-time applicant during the ~~conduction of period~~ that the criminal background check is being conducted by the Arkansas State Police and the FBI.

3.09~~13~~ OPL: Office of Professional Licensure of the ADE.

3.04~~14~~ SBE: State Board of Education.

4.00 THE CRIMINAL BACKGROUND CHECK

4.01 Each applicant for an initial license issued by the SBE and each first-time license renewal applicant will submit the following to the Office of Professional Licensure:

4.01.1 Completed application form including program of studies verification (if applicable)

4.01.2 Official transcripts (must bear college seal)

4.01.3 Satisfactory scores of ~~National Teachers on~~ the Praxis Series Examinations including:

4.01.3.1 Praxis I

4.01.3.2 PPST/Praxis II
~~Praxis II~~

4.01.3.3 Principles of Learning and Teaching

4.01.3.4 Specialty area test

4.01.4 Effective July 1, 1996, no application for issuance of a first-time license will be considered without a criminal background check by the Arkansas State Police and the FBI.

4.01.5 Effective July 1, 1997, no application for issuance of a license renewal will be considered without a criminal background check by the Arkansas State Police and the FBI.

4.01.6 Effective April 10, 1997, no applicant for initial employment as a certified employee shall be hired by a school district without a criminal background check by the Arkansas State Police and FBI.

- 4.01.7 Effective February 6, 2004, the board of directors of a school district shall require an applicant for initial employment as a fiscal officer to have performed a criminal background check by the Arkansas State Police and the FBI, along with other background checks required by these Rules and/or Arkansas law due to the applicant's non-certified or certified employee status.
- 4.02 Each applicant shall complete the State Police fingerprint card in the presence of a law enforcement officer, and shall have the law enforcement officer sign the fingerprint card and give his/her jurisdiction, the date and his/her badge number.
- 4.03 Each applicant must sign a release of information and submit it to the ADE and shall be solely responsible for the payment of any fee associated with the criminal background check to the Arkansas State Police.
- 4.04 The Department of Education shall be responsible to the Department of Arkansas State Police for the payment of any fee associated with the criminal record check of each applicant as defined in Section 3.068 for his or her first license renewal after July 1, 1997.
- 4.05 Upon completion of the criminal background check, the Identification Bureau of the Arkansas State Police shall forward all information obtained concerning the applicant in the commission of any offense listed in Ark. Code Ann. ' 6-17-410 (c) (~~Supp. 1997~~) or referenced in Ark. Code Ann. § 6-17-410 (e)(2)(A) to the ~~Legal~~ Attorney's Office of the ADE.
- 4.06 The criminal background check conducted by the Arkansas State Police and the FBI shall have been completed no earlier than twelve (12) months prior to the application for an initial license issued by the SBE.
- 4.07 SBE shall be authorized to issue a six-month, non-renewable letter of provisional eligibility for licensure to a first-time applicant pending the results of the criminal records check. This letter of provisional eligibility for licensure shall be issued only to those applicants who meet all other qualifications for licensure by the SBE, and who have submitted the Arkansas State Police background check showing no violations listed in Ark. Code Ann. ' 6-17-410 (c)(~~Supp.1997~~).
- 4.08 The Director of the Department of Education shall be authorized to extend the period of provisional eligibility to the end of the contract year if:
- 4.08.1 The applicant is employed by a local school district; and
- 4.08.2 Results of the criminal records check are delayed.
- 4.09 The letter of provisional eligibility will immediately become invalid upon

receipt of information obtained from the criminal background check from the Arkansas State Police and the FBI and other eligibility information indicating that the applicant has pleaded guilty or nolo contendere to, or has been found guilty of, any offense listed in Ark. Code Ann. ' 6-17-410 (c) (Supp.1997).

4.10 The ADE will not issue a first-time teaching license nor a license renewal until the criminal background check conducted by the Arkansas State Police and the FBI has been completed.

4.11 The ADE shall promptly inform the board of directors of the local school district whether or not the affected employment applicant for a fiscal officer position is eligible for employment.

4.12 In addition to any ineligibility for employment due to the results of criminal background checks required due to the applicant's certified or non-certified employee status, no person shall be eligible for employment as a fiscal officer by a local school district if the results of the criminal records check released to the ADE by the applicant reveals that the applicant has pleaded guilty or nolo contendere to, or has been found guilty of, a fraudulent act, only after an opportunity for a hearing before the SBE upon reasonable notice in writing.

4.13 The board of directors of a local school district is authorized to offer provisional employment to an affected applicant for employment as a fiscal officer pending receipt of eligibility information from the ADE.

5.00 REQUEST FOR WAIVER

5.01 A request to waive the provisions of either Ark. Code Ann. ' 6-17-410 (c) ~~(Supp.1997)~~ or Ark. Code Ann. § 6-17-414 (b)(1) can be made to the SBE. A request for waiver of provisions of the aforementioned ~~section-statutes~~ may be made by:

5.01.1 the board of a local school district,

5.01.2 the affected applicant for licensure ~~or~~ (Ark. Code Ann. § 6-17-410 (c)) or employment (Ark. Code Ann. § 6-17-414 (b)(1)), or

5.01.3 the person holding a license subject to revocation (Ark. Code Ann. § 6-17-410(c)(1) only).

5.02 The request must be made in writing to the Coordinator of OPL or designee within twenty (20) calendar days after notification of denial of a license. The request for a waiver shall include, but not be limited to, the following:

- 5.02.1 a certified copy of court records indicating grounds for conviction,
- 5.02.2 any other pertinent documentation to indicate surrounding circumstances.
- 5.03 If an individual notifies ~~OPL~~ ADE in writing that he/she desires a hearing, the SBE will hold a hearing.
- 5.04 If the individual does not notify the ~~OPL~~ ADE that he/she desires a hearing, the SBE will not hold a hearing and may take action based upon proof submitted by OPL.
- 5.05 Circumstances for which a waiver may be granted shall include, but not be limited to, the following:
 - 5.05.1 The age at which the crime was committed.
 - 5.05.2 The circumstances surrounding the crime.
 - 5.05.3 The length of time since the crime.
 - 5.05.4 Subsequent work history.
 - 5.05.5 Employment references.
 - 5.05.6 Character references; and
 - 5.05.7 Other evidence demonstrating that the applicant does not pose a threat to the health or safety of school children or school personnel.
- 5.06 For individuals falling under the provisions of Ark. Code Ann. § 6-17-414, no waiver shall be granted if the SBE determines that the offense was a violent, physical, or sexual offense.

6.00 SCHOOL DISTRICT RESPONSIBILITIES

- 6.01 The superintendent of each school district shall report to the SBE through the Coordinator of OPL or the designee the name of any person holding a license issued by the SBE and currently employed, or employed during the two (2) previous school years, by the local district who has pleaded guilty, nolo contendere, or has been found guilty of a felony, who holds such license obtained by fraudulent means, who has had a similar license revoked in another state, who has intentionally compromised the validity or security of any student test or testing program administered or required by the ADE, or has submitted falsified information requested or required by the ADE.

6.02 The superintendent of each school district shall report to the SBE the name of any fiscal officer who is currently employed or who was employed during the two (2) previous years by the local school district who has pleaded guilty or nolo contendere to, or has been found guilty of, a fraudulent act.

6.023 The superintendent with knowledge shall report, in writing to the SBE through the Coordinator of OPL or designee, any information contained in ~~s~~Section 6.01. The complaint does not have to be made in any specific form, but it should contain enough information about the person holding a license issued by the SBE to warrant starting an investigation.

6.034 Failure of a superintendent to report a violation by certified mail within five (5) calendar days of knowledge, as listed in ~~regulations~~ Section 6.01 may result in sanctions imposed by the SBE, including but not limited to loss of accreditation.

7.00 LICENSE REVOCATION PROCEDURES

7.01 A complaint is filed with OPL, or the ADE receives information from the criminal background check and any other eligibility information reflecting that the individual pled guilty, nolo contendere, or has been found guilty of an offense or offenses listed in Ark. Code Ann. § 6-17-410 (c) or is referenced in Ark. Code Ann. § 6-17-410 (e)(2)(A).

7.02 OPL investigates the complaint and determines whether the individual's educational license must or may be revoked.

7.03 If ~~OPL~~ OPL determines revocation of a license is appropriate, OPL or the ADE's Attorney's Office notifies the individual who has plead guilty, nolo contendere, or been found guilty of the offense(s) listed in Ark. Code Ann. ' 6-17-405 (a) and (b) (~~Supp.1997~~) 410 in writing by certified mail of the date, time and location that the SBE will consider revocation. The letter shall also provide the individual reasonable notice of the cause to be considered.

7.04 If the individual notifies ~~OPL~~ ADE in writing no less than thirty (30) days after notice of the cause is received by the individual that he/she desires a hearing, the SBE will hold a hearing.

7.05 If the individual does not notify the ~~OPL~~ ADE that he/she desires a hearing within the time frame stated in Section 7.04, the SBE will not hold a hearing and may take action based upon proof submitted by the ADE.

8.00 CURRENTLY EMPLOYED FISCAL OFFICERS AND APPLICANTS

8.01 (i) A fiscal officer that pleads guilty or nolo contendere to, or has been found guilty of, a fraudulent act, shall be dismissed from employment with the school district, but only after an opportunity for a hearing before the SBE upon reasonable notice in writing.

(ii) The SBE, after conducting a hearing, shall determine either:

(a) that the applicant is eligible for employment and that the applicant should be denied employment and/or a license that the applicant's employment and licensure status should be terminated should be prevented or that the termination of employment of the currently employed fiscal officer should be required, or

(b) that the applicant is eligible for employment and/or a license or that the applicant's employment and licensure status should not be terminated.

8.02 The SBE shall be entitled to consider:

8.02.1 The age of the fiscal officer at the time the criminal act occurred;

8.02.2 The length of time since the conviction;

8.02.3 Whether the fiscal officer has pleaded guilty, nolo contendere, or has been found guilty of any other criminal violation since the original conviction;

8.02.4 Whether the original conviction was expunged or pardoned; and

8.02.5 Any other relevant facts.

8.03 After making its decision, the SBE shall reduce its decision to writing shall mail copies of the decision to the fiscal officer applicant or currently employed fiscal officer and the Superintendent of the affected school district.